88-1569

Supreme Court, U.S.
FILED
MAR 10 1989
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1988

RICHARD H. AUSTIN,
Michigan Secretary of State,
and FRANK J. KELLEY,
Michigan Attorney General,

Appellants,

v.

MICHIGAN STATE CHAMBER OF
COMMERCE, a non-profit Michigan
Corporation,

Appellee.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

JURISDICTIONAL STATEMENT

FRANK J. KELLEY
ATTORNEY GENERAL

LOUIS J. CARUSO
Solicitor General
Counsel of Record
525 West Ottawa Street
Lansing, Michigan 48913
(517) 373-1124

GARY P. GORDON
RICHARD P. GARTNER
Assistant Attorneys General
Attorneys for Appellants

STATEMENT OF QUESTION PRESENTED

Whether a non-profit corporation formed to promote the interests of the business community, which draws 75 percent of its funds from business corporations, may constitutionally be barred from expending such funds in political campaigns advocating the nomination, election, or defeat of a designated candidate or candidates for public office.

TABLE OF CONTENTS

	Page
STATEMENT OF QUESTION PRESENTED	i
INDEX OF AUTHORITIES	iii
OPINIONS AND ORDERS OF THE COURTS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	
A. Background	4
B. The Decisions Of The Courts Below	11
ARGUMENT	
THE COURT OF APPEALS ERRED IN HOLDING SECTION 54(1) UNCONSTITUTIONAL AS APPLIED TO THE MICHIGAN STATE CHAMBER OF COMMERCE, A NON-PROFIT CORPORATION FORMED TO PROMOTE THE INTERESTS OF THE BUSINESS COMMUNITY, WHICH DRAWS 75 PERCENT OF ITS FUNDS FROM BUSINESS CORPORATIONS	14
A. The Decision Below Is In Direct Conflict With The Decisions Of This Court	15
B. The Decision Below Has A Potentially Adverse Impact On The Campaign Finance Laws Of The United States And Twenty States	24
CONCLUSION	30

INDEX OF AUTHORITIES

	Pages
Cases	
Federal Election Commission v Massachusetts Citizens for Life, Inc., 479 US 238 (1986)	passim
Federal Election Commission v National Right to Work Committee, 459 US 197 (1982)	passim
First National Bank of Boston v Bellotti, 435 US 765 (1978)	24
People v Gansley, 191 Mich 357, 158 NW 195 (1916)	4
United States v UAW, 352 US 567 (1957)	16
Constitutional Provisions	
U. S. Const. Amend. I	2-3
U. S. Const. Amend. XIV, § 1	3
Federal Statutes	
2 USC § 441	25
2 USC § 441b	16,25
28 USC § 1254(2)	2
Labor Management Relations Act of 1947, (Taft-Hartley Act), 61 Stat. 136 (1947)	25
Tillman Act, Act of 1907, ch. 420, 34 Stat. 864 (1907)	15

	Pages
Michigan Statutes	
Michigan Campaign Finance Act, Act No. 388 of 1976, Michigan Comp. Laws Ann. § 169.201 et seq (West 1988 Supp.)	3,4
MCL § 169.203(4)	9,22
MCL § 169.206(1)	6
MCL § 169.208(2)	8
MCL § 169.209(1)	7
MCL § 169.211(1)	8
MCL § 169.211(2)	8
MCL § 169.224	8
MCL § 169.225	8
MCL § 169.226	8
MCL § 169.228	8
MCL § 169.231	8
MCL § 169.232	8
MCL § 169.233	8
MCL § 169.235	8
MCL § 169.236	8
MCL § 169.237	8
MCL § 169.238	8
MCL § 169.251(1)	22
MCL § 169.254(1)	passim

	Pages
MCL § 169.254(5)	11
MCL § 169.255(1)	7
MCL § 169.255(2)	7
MCL § 169.255(3)	8
Corrupt Practices Act, No. 109 of the Public Acts of 1913	4
Act No. 116 of the Public Acts of 1954, § 919	5
Act No. 227 of the Public Acts of 1975, § 95	5
Act No. 351 of the Public Acts of 1925, Pt. 5, Ch. II, § 14	5
Other State Statutes	
Ala. Code §§ 10-2a-70, 10-2a-70.1, 10-2a-70.2 (1987 and 1988 Supp.)	13
Conn. Gen. Stat. Ann. § 9-3330 (West 1988 Supp.)	13
Iowa Code Ann. § 56.29 (West 1988 Supp.)	13
Ky. Rev. Stat. § 121.025 (1988 Supp.)	13
Minn. Stat. Ann. § 211B.15 (West 1988-1989 Supp.)	13
Miss. Code Ann. § 97-13-15 (1988 Supp.)	13
Mont. Code Ann. § 13-35-227 (1987)	13
N.H. Rev. Stat. Ann. § 664:4(I) (1986)	13

Pages

N.Y. Elec. Law § 14-116 (McKinney 1978 and 1988 Supp.) 13

N.C. Gen. Stat. § 163-278.19 (1988) ... 13

N.D. Cent. Code § 16.1-08-02(1) (1987 Supp.) 13

Ohio Rev. Code Ann. § 3599.03 (Page 1988) 13

Okla. Stat. Ann. title 74, § 4219 (West 1988 Supp.) 13

Pa. Stat. Ann. title 25, § 3253 (Purdon 1988 Supp.) 13

S.D. Codified Law § 12-25-2 (1982) 13

Tenn. Code Ann. § 2-19-132 (1985) 13

Tex. Election Code Ann. § 251.010 (Vernon 1986 and 1988 Supp.) 13

W. Va. Code § 3-8-8 (1987) 13

Wis. Stat. Ann. § 11.38 (West 1986) ... 13

Legislative History

93 Cong. Rec. 6438 (1947) 25

Miscellaneous

Congressional Spending Tops $450 Million in 1986, 13 Federal Election Commission 2 (1987) 27

FEC Reports on Financial Activity 1985-1986, Vol. I (March, 1988) 28

Detroit News, September 27, 1988, at 1B, col. 5 27

N.Y. Times, February 25, 1989, at 9, col. 1 27

OPINIONS AND ORDERS OF THE COURTS BELOW

The December 14, 1988 order denying petition for rehearing en banc is set forth in the attached Appendix, p. 30a, infra. The September 15, 1988 opinion of the United States Court of Appeals for the Sixth Circuit (App. p. 1a, infra) is published at 856 F2d 783 (6th Cir, 1988). The September 3, 1986 opinion and judgment of the United States District Court for the Western District of Michigan is published at 643 F Supp 397 (WD Mich, 1986) (App. pp. 39a, 78a, infra).

JURISDICTION

The judgment of the United States Court of Appeals, holding MCL § 169.254(1) (West 1988 Supp), which bars the expenditure of corporate treasury money in Michigan candidate elections, unconstitutional as applied to the Michigan State Chamber of

Commerce, "a nonprofit Michigan corporation ... comprised of about eight thousand voluntary members, approximately seventy-five percent of whom are corporations," (App. p. 3a), was entered on September 15, 1988. A petition for rehearing en banc was denied on December 14, 1988. (App. p. 30a.) The Appellants filed a timely Notice of Appeal in the United States Court of Appeals for the Sixth Circuit on March 1, 1989. (App. p. 79a.) This Court has jurisdiction of this appeal pursuant to 28 USC § 1254(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourteenth Amendment to the Constitution of the United States provides:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The statute at issue, MCL § 169.254(1) (West 1988 Supp), in pertinent part, states:

> Except with respect to the exceptions and conditions in subsections (2) and (3) and section 55, and to loans made in the ordinary course of business, a corporation may not make a contribution or expenditure ... .

The other relevant provisions of the Michigan Campaign Finance Act, Act No. 388 of 1976, MCL § 169.201 et seq (West 1988

Supp) are reprinted in the Appendix, p. 83a, infra.

STATEMENT OF THE CASE

A. Background

For over seventy-five years, the Michigan legislature has recognized that election activity by business organizations in the corporate form pose special problems of corruption and the appearance of corruption. As early as 1913, Michigan enacted the Corrupt Practices Act[1] which banned the use of corporate treasury funds for the payment of election expenses. This statutory ban withstood a constitutional attack in People v Gansley, 191 Mich 357, 158 NW 195 (1916). Consistent with that precedent and its

[1]Act No. 109 of the Public Acts of 1913.

expert judgment that a general prohibition on contributions and expenditures by business corporations in candidate elections is necessary to achieve compelling public interests, the Michigan legislature for decades has protected the integrity of the electoral process by enacting, re-enacting and refining laws[2] barring corporations from utilizing treasury funds to finance contributions, expenditures or independent expenditures in connection with candidate elections. At issue in this case is the ban on independent expenditures from treasury funds by a non-profit corporation, the Michigan State Chamber of Commerce, formed to promote the interests of the business

[2]See Act No. 351 of tne Public Acts of 1925, Pt. 5, Ch. II, § 14; Act No. 116 of the Public Acts of 1954, § 919; and Act No. 227 of the Public Acts of 1975, § 95.

community, which accepts corporate monies in the form of dues from its thousands of corporate members. That ban prevents the Michigan State Chamber of Commerce from serving as a conduit for corporate treasury money into Michigan candidate elections.

The statute at issue, MCL § 169.254(1), prohibits "a corporation" from utilizing treasury funds to finance independent expenditures in connection with a state candidate election. An independent expenditure is defined as an expenditure[3] which "is not made at the direction of, or

[3]"Expenditure" is defined by § 6 of the Act as "a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question." MCL § 169.206(1).

under the control of, another person and if the expenditure is not a contribution to a committee." MCL § 169.209(1). The Act permits, however, the use of such treasury funds for "the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes." MCL § 169.255(1). Business corporations are restricted to soliciting contributions to those separate segregated funds (political action committees) from stockholders, officers and directors, and executive and administrative personnel of the corporation. MCL § 169.255(2).

Non-profit corporations are restricted to soliciting contributions from individual members and their spouses, stockholders, officers and directors, and executive and

administrative personnel of a non-profit corporation. MCL § 169.255(3). A separate segregated fund must register with the Michigan Department of State as an "independent committee"[4] or a "political committee"[5] and is subject to registration and reporting requirements.[6]

Similarly, any "person"[7] who receives contributions or makes expenditures in

---

[4]"Independent committee" is defined by § 8(2) of the Act, MCL § 169.208(2).

[5]"Political Committee" is defined by § 11(2) of the Act. MCL § 169.211(2).

[6]The registration and reporting requirements are contained in §§ 24-26, 28, 31-33, 32, 33, 35-38 of the Act. MCL §§ 169.224, 169.225, 169.226, 169.228, 169.231, 169.232, 169.233, 169.235, 169.236, 169.237, and 169.238.

[7]"Person" is defined by § 11(1) of the Act as a "business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly." MCL § 169.211(1).

connection with a state candidate election in the amount of $200.00 or more in a calendar year, is a "committee"[8] for purposes of the Act and is subject to registration and reporting requirements.

The Michigan State Chamber of Commerce ("State Chamber") is a non-profit, membership corporation formed in 1959 under Michigan law to promote the common good and the interests of the Michigan business community. (App. pp. 3a, 41a.) More than 75 percent of the 8,000 members of the State Chamber are profit-making business corporations, such as General Motors, Ford, Chrysler, etc. (App. pp. 3a, 33a.) All State Chamber members, corporate and non-corporate, are assessed and pay annual dues to the State Chamber. (App. p. 3a.)

---

[8]"Committee" is defined by § 3(4) of the Act. MCL § 169.203(4).

On June 10, 1985, a special election was scheduled to be held to fill a vacancy caused by the resignation of the incumbent in the 93rd Legislative District for the Michigan House of Representatives. (App. pp. 4a, 42a-43a.) Through a paid advertisement in the June 9, 1985 Grand Rapids Press, the State Chamber sought to make an independent expenditure out of its treasury funds in support of Richard Bandstra, a candidate in the special election.[9] (App. p. 4a.) Because a violation of the ban on independent expenditures in candidate elections by a corporation constitutes a felony, punishable

[9]The State Chamber, if it had desired, could have paid for the advertisement in question through its separate segregated fund, the State Chamber Political Action Committee, which was established in 1977. (App. pp. 7a, 42a.)

by a fine of $10,000.00, the State Chamber was precluded from making the independent expenditure at issue.[10] It, then, filed an action in the United States District Court for the Western District of Michigan for declaratory and injunctive relief against Appellants on May 24, 1985, challenging the constitutionality of § 54(1) which prohibits corporate independent expenditures in candidate elections.

B. The Decisions of the Courts Below

Following the completion of discovery, a four-day non-jury trial was conducted before

[10]Section 54(5) of the Act, MCL § 169.254(5), imposes criminal penalties upon violators of § 54(1) of the Act:

> A person who knowingly violates this section is guilty of a felony and shall be punished by a fine of not more than $5,000.00 or imprisoned for not more than 3 years, or both, and if the person is other than an individual, the person shall be fined not more than $10,000.00.

The Honorable Douglas W. Hillman, Chief Judge, on May 9 and 12, 1986, and June 12 and 13, 1986. Judge Hillman issued his opinion on September 3, 1986 concluding that the ban on corporate independent expenditures in candidate elections as applied to the State Chamber was not violative of the First Amendment because the ban "serve[d] the state's compelling interest in preventing corruption or the appearance of corruption in the electoral process." (Footnote omitted.) (App. p. 59a.) The Court further found that § 54(1) was valid under the Equal Protection Clause of the Fourteenth Amendment. Accordingly, on September 3, 1986, the District Court entered a judgment in favor of Appellants and against Appellee. (App. p. 78a.)

On September 16, 1986, the State Chamber filed its Notice of Appeal with the United States Court of Appeals for the Sixth Circuit. On September 15, 1988, the Court of Appeals reversed holding that § 54(1) as applied to the State Chamber is unconstitutional, "for it infringes upon speech at the core of the first amendment without a compelling justification." (Footnote omitted.) (App. p. 28a.)

On September 28, 1988, Appellants filed a petition for rehearing en banc in the Court of Appeals. On December 14, 1988, an order was entered denying the petition. (App. p. 30a.) Four judges of the Sixth Circuit on December 27, 1988 dissented from the order denying the petition for rehearing en banc, asserting that the Court of Appeals decision violated this Court's holding in

Federal Election Commission v Massachusetts Citizens for Life, Inc., 479 US 238 (1986). (App. p. 32a.)

ARGUMENT

THE COURT OF APPEALS ERRED IN HOLDING SECTION 54(1) UNCONSTITUTIONAL AS APPLIED TO THE MICHIGAN STATE CHAMBER OF COMMERCE, A NON-PROFIT CORPORATION FORMED TO PROMOTE THE INTERESTS OF THE BUSINESS COMMUNITY, WHICH DRAWS 75 PERCENT OF ITS FUNDS FROM BUSINESS CORPORATIONS.

The question presented in this appeal is so substantial as to require plenary review by this Court for two principal reasons.

First, the decision below is manifestly inconsistent with the plain teachings of the controlling opinions of this Court in such cases as Federal Election Commission v Massachusetts Citizens for Life, Inc., 479 US 238 (1986) (MCFL) and Federal Election Commission v National Right to Work Committee, 459 US 197 (1982) (NRWC).

Second, the question presented has great and immediate national importance because the decision below, if followed, would render unconstitutional as applied to the corporate conduits of business corporations the well-established laws of the United States and at least twenty states barring the expenditure of corporate treasury funds in connection with political elections.

A. The Decision Below Is In Direct Conflict With The Decisions Of This Court.

Since the enactment of the Tillman Act[11] in 1907, federal laws have prohibited corporations from making contributions and expenditures for the purpose of influencing the election of a candidate to federal

---

[11] Act of 1907, ch. 420, 34 Stat. 864 (1907).

office.[12] The laws of at least twenty states contain similar, long-standing prohibitions against both contributions and expenditures by corporations.[13] In Federal Election

---

[12]The current prohibition is contained in Section 441b of the Federal Election Campaign Act, 2 USC § 441b. The history of this provision and its predecessors has been reviewed by this Court in United States v UAW, 352 US 567, 570-584 (1957); and Federal Election Commission v National Right to Work Committee, 459 US 197, 208-209 (1982).

13

See Ala. Code §§ 10-2a-70, 10-2a-70.1, 10-2a-70.2 (1987 and 1988 Supp.); Conn. Gen. Stat. Ann. § 9-3330 (West 1988 Supp.); Iowa Code Ann. § 56.29 (West 1988 Supp.); Ky. Rev. Stat. § 121.025 (1988 Supp.); Minn. Stat. Ann. § 211B.15 (West 1988-1989 Supp.); Miss. Code Ann. § 97-13-15 (1988 Supp.); Mont. Code Ann. § 13-35-227 (1987); N.H. Rev. Stat. Ann. § 664:4(I) (1986); N.Y. Elec. Law § 14-116 (McKinney 1978 and 1988 Supp.); N.C. Gen. Stat. § 163-278.19 (1988); N.D. Cent. Code § 16.1-08-02(1) (1987 Supp.); Ohio Rev. Code Ann. § 3599.03 (Page 1988); Okla. Stat. Ann. title 74, § 4219 (West 1988 Supp.); Pa. Stat. Ann. title 25, § 3253 (Purdon 1988 Supp.); S.D. Codified Law § 12-25-2 (1982); Tenn. Code Ann. § 2-19-132 (1985); Tex. Election Code Ann. § 251.010 (Vernon 1986 and 1988 Supp.); W. Va. Code § 3-8-8 (1987); Wis. Stat. Ann. § 11.38 (West 1986); Wyo. Stat. Ann. § 22-25-102 (1988 Cum. Supp.).

Commission v National Right to Work Committee, 459 US 197 (1982), this Court unanimously upheld those restrictions. Although the incorporated National Right to Work Committee was expending treasury funds for the purpose of soliciting contributions to its separate segregated fund, the logic of the Court's holding and the thrust of its reasoning are plainly applicable to both corporate contributions and corporate expenditures. The present Chief Justice in NRWC reaffirmed for the Court: "the importance of preventing both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption." 459 US at 208. He then traced the history of "the movement to regulate the political contributions and expenditures of

corporations and labor unions," 459 US at 208, and declared:

> [W]e accept Congress' judgment that it is the potential for such influence that demands regulation. Nor will we second-guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared. NRWC, 459 US at 210.

The parallel determination of the Michigan Legislature as set forth in MCL § 169.254(1), being part of the same reform movement, is entitled to the same "considerable deference." NRWC, 459 US at 209.

In Federal Election Commission v Massachusetts Citizens for Life, Inc., 479 US 238 (1986), this Court held over the dissent of four justices that the ban on independent expenditures cannot constitutionally be applied to a small,

grass roots group incorporated to advocate a political issue, if it derives all of its funds from the voluntary contributions of individuals. The opinion carefully and explicitly limited the holding so that it would not reach corporations like the Michigan State Chamber of Commerce, which derive a major portion of their funds from business corporations:

> In particular, MCFL has three features essential to our holding that it may not constitutionally be bound by Section 441b's restriction upon independent spending ... Third, MCFL was not established by a business corporation or a labor union, and it is its policy not to accept contributions from such entities. This prevents such corporations from serving as conduits for the type of direct spending that creates a threat to the political market place. 479 US at 263-264.

The Court below overrode this careful limitation or "feature" by treating it as if it read "conduits for massive undisclosed

corporate political spending," and by then reading the applicable Michigan statutes to require the State Chamber to disclose the sources of its political support. On both points, the Court's conclusions are erroneous. The MCFL limitations do not exclude only undisclosed corporate political contributions; they exclude any corporate money. Not only the great body of federal and state laws regulating political contributions and expenditures but the opinions of this Court rest upon the realization that disclosure is not always a sufficient safeguard against the appearance and actuality of corruption resulting from large political contributions and expenditures. "The governmental interest in preventing both actual corruption and the appearance of corruption of elected representatives has long been recognized."

(Citation omitted.) Federal Election Commission v National Right to Work Committee, 459 US at 210.

Judge Merritt, in the dissent from the denial of en banc review, recognized that because the State Chamber accepts corporate money from its 6,000 corporate members, it will serve as a conduit "for the type of direct spending that creates a threat to the political marketplace." (Citation omitted.) (App. p. 35a.) Accordingly, Judge Merritt concluded that the decision below disregarded the third limitation set forth in MCFL:[14]

> The panel decision, therefore, permits the very evil which all members of the Supreme Court agreed a state could prohibit. The panel allows the Chamber

[14]Judge Merritt also recognized that the Court of Appeals decision violated the first and second limitations set out by this Court in MCFL. (App. pp. 36a-37a.)

> to serve as a conduit for the type of direct spending that Michigan legislators believe creates a threat to the political marketplace. (Citation omitted.) (App. p. 36a.)

Furthermore, the Michigan disclosure statute cited by the Court below, MCL § 169.251(1), does not apply to the State Chamber or other incorporated conduits of the funds of business corporations. A conduit corporation would be a "committee" under the Michigan Campaign Finance Act, MCL § 169.203(4). The disclosure statute applies only to a "person, other than a committee." MCL § 169.251(1). Thus, if the decision below is followed, the State Chamber and other conduit corporations would be able to accept corporate money in the form of dues from any "member" business corporation and convert such unlimited amount of money into political expenditures

on behalf of political candidates, without ever disclosing the true source of financing.

Appellants recognize that NRWC, by a very narrow reading, can be limited to raising funds for corporate contributions prohibited by federal law and that MCFL did not require a decision upholding federal and state power to prohibit corporate expenditures for the purpose of influencing political elections. But even upon the narrowest reading, the precedents of this Court show that the question presented by the present case is substantial. Our position is squarely sustained by the view of the four dissenting judges in MCFL. In like manner, our position is sustained by the view of the four dissenting judges in the Court of Appeals, who would have granted en banc

review because they were of the view that the decision below violated this Court's holding in MCFL. (App. p. 32a). Furthermore, this Court's prior decisions, which can be read to treat the question as unresolved, implicitly assume that the question herein deserves full consideration by this Court. See, Federal Election Commission v Massachusetts Citizens for Life, Inc., 479 US at 263; First National Bank of Boston v Bellotti, 435 US 765, 788, n. 26 (1978).

Accordingly, Appellants respectfully submit that the decision below conflicts with MCFL and NRWC, and should be reviewed by this Court.

B. The Decision Below Has a Potentially Adverse Impact On The Campaign Finance Laws Of The United States And Twenty States.

The national importance of the constitutional question presented by this

case is plain. 2 USC § 441 would prohibit the expenditures involved in this case if made by the State Chamber to support a political candidate for federal office.[15] MCFL, 479 US at 263-264. Under the decision below 2 USC § 441b of the Federal Election Campaign Act, so applied, would be unconstitutional. Twenty state statutes prohibit expenditures by corporations in support of candidates in state elections.[16] Because they facially apply to all corporations without qualifications, the decision below throws doubt upon the

---

[15]During the 1947 Congressional Debates on the Labor Management Relations Act of 1947, (Taft-Hartley Act), 61 Stat. 136 (1947), Senator Taft specifically stated that the National Association of Manufacturers and the United States Chamber of Commerce, which had corporate members, could not use treasury funds in federal election campaigns. 93 Cong. Rec. 6438 (1947).

[16]See supra note 14 and accompanying text.

constitutionality of all those state laws as applied to their state and local chambers of commerce and similar membership and trade organizations.

Michigan State Chamber of Commerce is far from unique. Formed to promote the class of business interests, it is duplicated in other national, state, regional and local chambers of commerce. The country is filled with similar organizations promoting the special political interests of business and narrower classes of businesses, of professions, and of other special economic units, including bankers, insurers, automobile dealers, building contractors, realtors, retailers, stockbrokers, and manufacturers.

There can be little doubt that if the decision below stands, it will open a wide

conduit for a flood of business corporation expenditures supporting or opposing candidates for federal and state office.[17] The ever-increasing flood of political contributions and expenditures in congressional campaigns has been documented by the Federal Election Commission.[18] The intense desire of business interests to spend more and more money for electioneering

---

[17]The treasurer of the State Chamber has already boasted that the decision below applies to all ideologically based trade associations, incorporated citizen groups and other incorporated organizations. Detroit News, September 27, 1988, at 1B, col. 5.

[18]Total congressional candidate campaign expenditures increased from $194.8 million in the 1977-1978 campaigns to over $450 million in the 1985-1986 election cycle. Congressional Spending Tops $450 Million in 1986, 13 Federal Election Commission 2 (1987). For the 1987-1988 election cycle, congressional candidate campaign expenditures totaled $457 million. N.Y. Times, February 25, 1989 at 9, col. 1.

is evidenced by the growing number of political action committees (PACs) and PAC contributions.[19] Under the decision below the management of a business corporation wishing to draw upon its corporate funds amassed for business purposes in order to obtain government benefits by supporting particular electoral candidates has only to join other like-minded corporate managements in channeling corporate funds through a non-profit corporation, perhaps along with a much smaller amount of money from individuals, in order to accomplish indirectly what they cannot do directly consistently with law.

---

[19]More than 1900 separate segregated funds have been established by corporations, which reported to the Federal Election Commission receiving $81.9 million in voluntary political contributions and expending $79.2 million on contributions and expenditures during the 1983-1984 election cycle. See FEC Reports on Financial Activity 1985-1986, Vol. I at p. 78 (March, 1988).

In short, the decision below, if followed, will substantially alter federal election campaigns and candidate election campaigns in at least twenty states. The question of whether a conduit corporation should be permitted to use corporate treasury funds for unlimited political expenditures with no public disclosure of the actual sources of such funds is a question of significant national importance, which merits plenary consideration by this Court.

CONCLUSION

Based on the foregoing arguments and authorities, Appellants Richard H. Austin and Frank J. Kelley respectfully request that this Court note probable jurisdiction in this appeal, and set this case for briefing and argument on the merits.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Louis J. Caruso
Solicitor General
Counsel of Record

Gary P. Gordon
Richard P. Gartner
Assistant Attorneys General

Attorneys for Appellants

APPENDIX

Table of Contents

	Page
Opinion of the Court of Appeals	1a
Order of the Court of Appeals Denying Petition for Rehearing En Banc	30a
Amended Order of the Court of Appeals Denying Petition for Rehearing En Banc	32a
Opinion of the District Court	39a
Judgment of the District Court	78a
Notice of Appeal	79a
Relevant Statutory Provisions	83a

No. 86-1867

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MICHIGAN STATE CHAMBER OF COMMERCE,
a non-profit Michigan corporation,
Plaintiff-Appellant,
v

Richard H. AUSTIN, Michigan Secretary of State; and FRANK J. KELLEY, Michigan Attorney General,
Defendants-Appellees.

Decided and Filed September 15, 1988

Before ENGEL, Chief Judge*, RYAN, Circuit Judge, and PECK, Senior Circuit Judge.

*The Honorable Albert J. Engel assumed the duties of Chief Judge effective April 1, 1988.

RYAN, Circuit Judge.

This appeal concerns the constitutionality of § 54(1) of the Michigan Campaign Finance Act under the first and fourteenth amendments to the United States Constitution, and article I of the Michigan Constitution. Section 54(1) severely restricts the ability of corporations to make indirect expenditures in support of or in opposition to the elec-

tion of a candidate for Michigan office. Although directly infringing upon the first amendment free speech guarantees of corporations, § 54(1) was upheld by the district court as a narrowly drawn regulation that serves the compelling state interest of preventing the threat or appearance of corruption. We conclude that indirect expenditures made by a nontraditional corporation, like the Michigan State Chamber of Commerce, formed for essentially ideological purposes and to disseminate economic and political ideas and not to amass capital, do not pose the threat or appearance of corruption. We hold that § 54(1), as applied to the Chamber, is unconstitutional under the first amendment.

I.

Plaintiff-appellant, the Michigan State Chamber of Commerce (the Chamber), is a

nonprofit Michigan corporation funded by the annual dues which its corporate and noncorporate members are required to pay. The defendants-appellees are Richard H. Austin, the Michigan Secretary of State, and Frank J. Kelley, the Michigan Attorney General.

The Chamber is comprised of about eight thousand voluntary members, approximately seventy-five percent of whom are corporations. The Chamber characterizes itself as an ideological corporation formed to promote the common good and interests of the Michigan business community. The Chamber's objectives and purposes, as stated in its bylaws, include promoting conditions conducive to economic development, training and educating its members, encouraging the maintenance and observance of ethical business practices, and receiving expenditures and making contributions for political purposes.

In June of 1985, the Chamber sought to place a paid advertisement in the Grand Rapids Press in support of Richard Bandstra, the Republican nominee for the 93rd Legislative District for the Michigan House of Representatives. However, because § 54(1) of the Michigan Campaign Finance Act (the Act), Mich. Comp. Laws Ann. (M.C.L.A.) § 169.254(1) (1987 Supp.), appeared to prohibit the ad, the Chamber brought suit seeking declaratory and permanent injunctive relief allowing it to support political candidates through advertisements and other independent expenditures.[1]

---

[1]Section 54(5) of the Act, M.C.L.A. § 169.254(5) (1987 Supp.), imposes criminal penalties upon violators of § 54(1):

> A person who knowingly violates this section is guilty of a felony and shall be punished by fine of not more than $5,000.00 or imprisoned for not more than three years, or both, and if the person is other than an individual, the person shall be fined not more than $10,000.00.

Section 54(1) of the Act provides that:

> Except with respect to the exceptions and conditions in subsections (2) and (3) and section 55, and to loans made in the ordinary course of business, a corporation may not make a contribution or expenditure or provide volunteer personal services which services are excluded from the definition of a contribution pursuant to section 4(3)(a).

M.C.L.A. § 169.254(1). The Act defines an "expenditure" as including:

> A payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question. An offer or tender of an expenditure is not an expenditure if expressly and unconditionally rejected or returned.

M.C.L.A. § 169.206(1). An "independent expenditure" is defined as an expenditure:

> [B]y a person if the expenditure is not made at the direction of, or under the control of, another person and if the expenditure is not a contribution to a committee.

M.C.L.A. § 169.209(1).

The Act provides an exception to § 54(1)'s ban on corporate independent expenditures

through § 55. M.C.L.A. § 169.255 (1987 Supp.). This exception allows a corporation to make independent political expenditures if it establishes a separate segregated fund to be used solely for political purposes, a so-called "PAC." M.C.L.A. § 169.255(1). Corporate solicitation of contributions to a segregated fund of this type is limited to statutorily specified persons.[2] The Chamber's proposed ad in the Grand Rapids Press falls squarely within the Act's definition of an "indirect expenditure." See M.C.L.A. § 169.209(1), supra. The Chamber has established a segregated fund under the

---

[2]A nonprofit corporation may solicit contributions to its separate political fund from the following persons or their spouses: members of the corporation who are individuals, stockholders or members of the corporation, officers or directors of members of the corporation who have policymaking, managerial, professional, supervisory, or administrative nonclerical responsibilities. M.C.L.A. § 169.255(3)(a)-(d).

§ 55 exception, the Michigan State Chamber of Commerce Political Action Committee. However, it sought to make its indirect expenditure in support of Bandstra through the Chamber's general treasury funds.

The Chamber challenges the limitations § 54(1) places on a corporation's freedom to make independent political expenditures as violative of the first and fourteenth amendments to the Constitution and article I, §§ 2, 3, and 5 of the Michigan Constitution. First, the Chamber argues that § 54(1) violates its freedom of speech as guaranteed by the first amendment and article I, §§ 3 and 5 of the Michigan Constitution. Second, the Chamber argues that § 54(1) violates the equal protection clauses of the fourteenth amendment and article I, § 2 of the Michigan Constitution by distinguishing between corporate and noncorporate business entities.

Third, the Chamber argues that the Act violates its equal protection guarantees by exempting members of the print and broadcast media from the limitations of § 54(1). See M.C.L.A. § 169.206(3)(d) (1987 Supp.).

II.

Our analysis, like that of the district court, focuses only upon the Chamber's guarantees under the United States Constitution. The Michigan Supreme Court interprets the protections of article I, §§ 2, 3, and 5 of the Michigan Constitution identically with the United States Constitution in the context of legislative restraints upon electoral activities. See Advisory Opinion on Constitutionality of 1975 P.A. 227, 396 Mich. 465, 484-85, 492-93, 242 N.W.2d 3, 9-10, 14 (1976).

We first examine the Chamber's first amendment challenge to § 54(1). Where a government restricts the speech of a private person, including a corporation, the state action may be sustained only if the government can show that the regulation is a pre-

cisely drawn means of serving a compelling state interest. See Consolidated Edison Company v. Public Service Comm'n, 447 U.S. 530, 540, 100 S.Ct. 2326, 2334, 65 L.Ed.2d 319 (1980); First National Bank of Boston v. Bellotti, 435 U.S. 765, 786, 98 S.Ct. 1407, 1421, 55 L.Ed.2d 707 (1978); Buckley v. Valeo, 424 U.S. 1, 25, 96 S.Ct. 612, 637, 46 L.Ed.2d 659 (1976) (per curiam).

Citing the Supreme Court's holding in Buckely v. Valeo, supra, and Federal Election Comm'n v. National Conservative Political Action Committee, 470 U.S. 480, 496-97, 105 S.Ct. 1459, 1468-69, 84 L.Ed.2d 455 (1985), that "preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances," the district court upheld § 54(1) based upon its determination that:

> Section § 54(1)'s prohibition of corporate independent expenditures in political elections serves the state's compelling interest in preventing corruption or the appearance of corruption in the electoral process.

Michigan State Chamber of Commerce v. Austin, 643 F.Supp. 397, 402 (W.D. Mich. 1986). The court held that although there had been no finding of actual corruption, a finding of the threat or appearance of corruption was sufficient. Id. at 404. The court reasoned that a showing of the threat of corruption alone sufficed given the "great aggregations of capital and influence" and "faceless nature" of corporations, id. at 403, as well as the need for courts to not "second-guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared." Id. at 404 (citing Federal Election Comm'n v. National Right to Work Comm., 459 U.S. 197, 210, 103 S.Ct. 552, 561, 74 L.Ed.2d 364 (1982)).

In light of the Supreme Court's intervening decision in Federal Election Comm'n v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986), it now appears that the district court defined the issue in this case too broadly. The district court held that the case presented the issue of whether a state "may prohibit corporations from making independent expenditures to influence elections for public office." Michigan State Chamber of Commerce, 642 F.Supp. at 403 (emphasis added). The Supreme Court has yet to specifically address the issue as stated by the district court. See Massachusetts Citizens for Life, 479 U.S. at 264, 107 S.Ct. at 631, 93 L.Ed.2d at 560; National Conservative Political Action Comm., 470 U.S. at 496, 105 S.Ct. at 1468; Bellotti, 435 U.S. at 788, n. 26, 98 S.Ct. at 1422, n. 26.

In Massachusetts Citizens for Life, the Court addressed a nonprofit corporation's first amendment challenge to the Federal Election Campaign Act's (FECA) prohibition against indirect corporate political expenditures.[3] The Court found a distinction between "traditional corporations organized for economic gain," Massachusetts Citizens for Life, 479 U.S. at 259, 107 S.Ct. at 628, 93 L.Ed.2d at 557 (citing National Conservative Political Action Comm., 470 U.S. at 500, 105 S.Ct. at 1470),

---

[3]Section 316 of FECA, 2 U.S.C. § 441b (1985), is similar to § 54 of the Michigan Campaign Finance Act. Section 441b prohibits corporations organized under the authority of any law of Congress from using their treasury funds to make "expenditure[s] in connection with any election to any political office ..." and all corporations from making indirect expenditures in federal elections. Also like the Michigan Act, FECA, in § 441b, provides an exception for corporations which establish separate segregated funds for political activity.

and corporations "formed to disseminate political ideas, not to amass capital." Id. Traditional corporations raise "the prospect that resources amassed in the economic marketplace may be used to provide an unfair advantage in the political marketplace." Id. 479 U.S. at 257, 107 S.Ct. at 628, 93 L.Ed.2d at 556. Because this prospect is not presented by a corporation which is instead formed to disseminate political ideas, the mere threat or appearance of corruption "hardly constitutes the compelling state interest necessary to justify any infringement on First Amendment freedom." Id. 479 U.S. at 263, 107 S.Ct. at 630, 93 L.Ed.2d at 560 (emphasis in original).

We now reexamine the district court's holding in light of Massachusetts Citizens for Life.

III.

The Chamber's proposed political advertisement is speech which lies at the core of the first amendment.

> The [Federal Election Campaign] Act's contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people." Roth v United States, 354 US 476, 484, 77 S Ct 1304 [1308] 1 L Ed 2d 1498, 14 Ohio Ops 2d 331 (1957). Although First Amendment protections are not confined to "the exposition of ideas," Winters v New York, 333 US 507, 510, 68 S Ct 665 [667] (1948), 92 L Ed 840, "there is practically universal agreement that a major purpose of th[e] Amendment was to protect the free discussion of governmental affairs, ... of course includ[ing] discussions of candidates ...." Mills v Alabama, 384 US 214, 218, 86 S Ct 1434 [1436] (1966), 16 L Ed 2d 484. This is no more than reflects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," New York Times Co. v Sullivan, 376 US 254, 270, 84 S Ct 710 [720] 11 L Ed 2d 686, 95 ALR2d

> 1412 (1964). In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation. As the Court observed in Monitor Patriot Co. v Roy, 401 US 265, 272, 91 S Ct 621 [625] (1971), 28 L Ed 2d 35, "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office."

Buckley v. Valeo, 424 U.S. at 14-15, 96 S.Ct. at 632-33.

The Chamber does not surrender its first amendment rights merely by assuming the corporate form of organization.

> We thus find no support in the First or Fourteenth Amendment, or in the decisions of this Court, for the proposition that speech that otherwise would be within the protection of the First Amendment loses that protection simply because its source is a corporation ....

Bellotti, 435 U.S. at 784, 98 S.Ct. at 1420.

Nonetheless, a corporation's political speech through contributions and independent expenditures can be constitutionally

restricted if the government can show that the regulation is a "precisely drawn means of serving a compelling state interest." Consolidated Edison, 447 U.S. at 540, 100 S.Ct. at 2334. The Supreme Court has held that:

> [P]reventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances.

National Conservative Political Action Comm., 470 U.S. at 496-97, 105 S.Ct. at 1468-69.

The Supreme Court has invalidated independent expenditure limits in two contexts: the 1971 Campaign Act's ceiling on expenditures by individuals and groups, Buckley v. Valeo, 424 U.S. at 51, 96 S.Ct. at 650, and the Presidential Election Campaign Fund Act's limitation on expenditures by independent political committees, National Conservative Political Action Comm., 470 U.S. at 496-501, 105 S.Ct. at 1468-71.

The Court has not addressed the constitutionality of limitations on indirect political expenditures by traditional corporations that function as profit-making enterprises. Massachusetts Citizens for Life, 479 U.S. at 263, 107 S.Ct. at 630, 93 L.Ed.2d at 560. However, the Court has upheld the FECA limitations on a corporation's solicitation of contributions to its segregated political purpose fund. Federal Election Comm. v. National Right to Work Comm., 459 U.S. 197, 103 S.Ct. 552, 74 L.Ed.2d 364 (1982).

> In order to prevent both actual and apparent corruption, Congress aimed a part of its regulatory scheme at corporations. The statute reflects a legislative judgment that the special characteristics of the corporate structure require particularly careful regulations. See United States v Morton Salt Co., 338 US 632, 652, 70 S Ct 357 [368] (1950), 94 L Ed 401. While § 441b restricts the solicitation of corporations and labor unions without great financial resources, as well as those more fortunately situated, we accept Congress' judgment that it is the potential for such influence that demands regulation. Nor will we second-guess a legislative determination as to the need for prophy-

> lactic measures where corruption is the evil feared. As we said in California Medical Assn. v. FEC, 453 US 182, 201, 101 S Ct 2712 [2724] (1981), 69 L Ed 2d 567, the "differing structures and purposes" of different entities "may require different forms of regulation in order to protect the integrity of the electoral process."

National Right to Work Comm., 459 U.S. at 209-10, 103 S.Ct. at 560-61.

Despite the opportunity to do so, the Court did not extend the compelling state interest analysis of contribution limitations in National Right to Work Comm. to the independent expenditure limitations which FECA places on nonprofit corporations organized to disseminate political ideas.[4]

---

[4]"We have consistently held that restrictions on contributions require less compelling justification than restrictions on independent spending." Massachusetts Citizens for Life, 479 U.S. at 259, 107 S.Ct. at 628, 93 L.Ed.2d at 557 (citing National Conservative Political Action Comm., 470 U.S. at 500, 105 S.Ct. at 1470; California Medical Ass'n v. Federal Election Comm., 453 U.S. 182, 194, 196-97, 101 S.Ct. 2712, 2721, 2721-22, 69 L.Ed.2d 567 (1981); Buckley v. Valeo, 424 U.S. 20-22, 96 S.Ct. at 635-36).

Massachusetts Citizens for Life, 479 U.S. at 263, 107 S.Ct. at 630, 93 L.Ed.2d at 560. Massachusetts Citizens for Life, Inc. (MCFL) was a nonprofit, nonstock corporation organized for the purpose of disseminating ideas supportive of the pro-life movement. It was composed of "members" who either supported its activities or contributed to the organization. It did not accept contributions from corporations or unions. Under these facts, the Court found that the "spectre of corruption" was not a sufficiently compelling interest to justify FECA's impact upon MCFL's first amendment rights. Id.

Thus, the Court specifically rejected the analysis employed by the district court in this case. The Chamber is a nonprofit corporation comprised of voluntary members who have banded together to promote their common interest in Michigan's business community.

It is in essence a corporation formed for ideological purposes and is a "voluntary political association." As such, it does "not suddenly present the spectre of corruption merely by assuming the corporate form." Id. 479 U.S. at 262, 263, 107 S.Ct. at 629-30, 93 L.Ed.2d at 559-60.

The district court made no finding that independent expenditures by corporate entities like the Chamber actually corrupted the electoral process. Rather, the court held that "a finding of the threat or appearance of corruption is enough." Michigan State Chamber of Commerce, 643 F.Supp. at 404. We conclude, as the court did in Massachusetts Citizens for Life, that "[t]his hardly constitutes the compelling state interest necessary to justify any infringement on First Amendment freedom." Massachusetts Citizens for Life, 479 U.S. at 263, 107

S.Ct. at 630, 93 L.Ed.2d at 560 (emphasis in original).

The Court in Massachusetts Citizens for Life noted that MCFL had three features which were essential to the Court's holding that any appearance of corruption resulting from MCFL's independent expenditures was not a compelling state interest. First, like the Chamber, MCFL "was formed for the express purpose of promoting political ideas, and cannot engage in business activities." Id. The Chamber is organized as a nonprofit corporation under state and federal laws. Although its bylaws empower it to provide training and education for its members and to collect data and make surveys, they also empower the chamber to promote conditions favorable to the economic development of Michigan and to "perform any ... acts of a political nature permitted by the laws of

the state of Michigan." Therefore, the Chamber, much like MCFL, was formed to promote and disseminate ideas--in the case of the Chamber, ideas and interests supportive of Michigan's business community--not to amass capital. And, like MCFL, "the resources it has available are not a function of its services in the economic marketplace, but its popularity in the political marketplace." Id. 479 U.S. at 259, 107 S.Ct. at 628, 93 L.Ed.2d at 557.

Second, the Court noted that MCFL, like the Chamber, "has no shareholders or other persons affiliated so as to have a claim on its assets or earnings." Id. The Chamber is funded by annual dues. Members who fail to timely pay these dues are subject to suspension by the Chamber. The Chamber's members are not akin to minority shareholders of a "traditional" corporation who

do not support the same candidates supported by the corporation's independent political expenditures.

> Individuals who contribute to [MCFL] are fully aware of its political purposes, and in fact contribute precisely because they support those purposes. It is true that a contributor may not be aware of the exact use to which his or her money ultimately may be put, or the specific candidate that it may be used to support. However, individuals contribute to a political organization in part because they regard such a contribution as a more effective means of advocacy than spending the money under their own personal direction. Any contribution therefore necessarily involves at least some degree of delegation of authority to use such funds in a manner that best serves the shared political purposes of the organization and contributor .... Finally, a contributor dissatisfied with how funds are used can simply stop contributing.

Id. 479 U.S. at 260, 107 S.Ct. at 629, 93 L.Ed.2d at 558.

Third, the Court noted that:

> MCFL was not established by a business corporation or a labor union, and it is its policy not to accept contributions from such entities. This prevents such corporations from serving as conduits for the type of direct spending that creates a threat to the political marketplace.

Id. 479 U.S. at 263, 107 S.Ct. at 630, 93 L.Ed.2d at 560. The Chamber is not a sub-

corporation established by a parent corporation. However, approximately seventy-five percent of its eight thousand members are corporations. Nonetheless, the Michigan Campaign Finance Act forecloses the danger of the Chamber's corporate members using the Chamber as a conduit for massive undisclosed corporate political spending. Section 51 of the Act. M.C.L.A. § 169.251(1) (1987 Supp.), requires that each person[5] who makes independent expenditures in excess of one hundred dollars in one calendar year in support of a candidate, file a report with the county clerk. The report must include, among other things, the name and address of each person who contributed more than one hundred dollars to the expenditure. Thus,

---

[5]The Act's definition of "person" includes individuals as well as corporations. M.C.L.A. § 169.211(1).

the reporting obligations of § 51 of the Act preclude, as a practical matter, the prospect of "faceless" Chamber corporate members utilizing the Chamber as a conduit through which massive undisclosed contributions are funneled for political purposes. Further, § 47 of the Act requires that printed advertisements, like that proposed by the Chamber, which relate to a candidate and are funded by indirect expenditures, contain the name of the person paying for the ad. M.C.L.A. § 169.247(1) (1987 Supp.). If the advertisement is not authorized by the candidate's own committee, it must so state. M.C.L.A. § 169.247(3).

We conclude that the Chamber, like Massachusetts Citizens for Life, Inc., is not the type of "traditional corporatio[n] organized for economic gain." Massachusetts Citizens for Life, 479 U.S. at 259, 107

S.Ct. at 628, 93 L.Ed.2d at 557 (citing National Conservative Political Action Comm., 470 U.S. at 500, 105 S.Ct. at 1470). It exists for purely ideological purposes. Its "business" is to develop, promote, and disseminate pro-business ideas and to influence political decisions. Since it does not operate in "the economic sphere," it does not exercise economic power as a result amassing "great aggregations of capital." Consequently, it does not and cannot exercise the kind of economic power the district court found "may very well create an atmosphere of distrust or the appearance of corruption in the electoral process." Michigan State Chamber of Commerce, 643 F.Supp. at 403. The potential for unfair deployment of wealth for political purposes is not presented by the Chamber's mere incorporation. The defen-

dants have failed to make the necessary showing of actual corruption required to uphold the constitutionality of § 54 as applied to the Chamber. We therefore hold that § 54's restriction on independent corporate spending is unconstitutional as applied to the Chamber, for it infringes upon speech at the core of the first amendment without a compelling justification.[6]

Because we find that the application of § 54 to the Chamber's speech is not supported by a compelling state interest, we need not consider the Chamber's arguments that the

---

[6]As noted, § 54's limitation on corporate independent expenditures applies to all corporations, including traditional corporations organized for economic gain as well as corporations like the Chamber which are organized to disseminate political ideas and not to amass capital. We draw no conclusions as to whether the state's interest in preventing the appearance or threat of corruption supports the application of § 54 to traditional corporations.

section is not "precisely drawn," Consolidated Edison, 447 U.S. at 540, 2234, or that it is violative of the equal protection clause of the fourteenth amendment. Accordingly, the judgment of the district court upholding § 54 is REVERSED.

Filed December 14, 1988--Leonard Green, Clerk

NO. 86-1867

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MICHIGAN STATE CHAMBER OF COMMERCE, A NON-PROFIT MICHIGAN CORPORATION, Plaintiff-Appellant, v. RICHARD H. AUSTIN, MICHIGAN SECRETARY OF STATE, AND FRANK J. KELLEY, MICHIGAN ATTORNEY GENERAL, Defendants-Appellees.	ORDER

BEFORE: ENGEL, Chief Judge; RYAN, Circuit Judge; and PECK, Senior Circuit Judge

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and less than a majority of the judges having favored the suggestion, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

Leonard Green, Clerk

FILED December 27, 1988-Leonard Green, Clerk

No. 86-1867

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MICHIGAN STATE CHAMBER OF COMMERCE, A NON-PROFIT MICHIGAN CORPORATION, Plaintiff-Appellant, v. RICHARD H. AUSTIN, MICHIGAN SECRETARY OF STATE, AND FRANK J. KELLEY, MICHIGAN ATTORNEY GENERAL, Defendants-Appellees.	ORDER

Upon consideration, it is ORDERED that the order denying rehearing en banc in this matter filed on December 14, 1988, is hereby amended to include the dissent of Circuit Judge Gilbert S. Merritt, attached hereto.

ENTERED BY ORDER OF THE COURT

Leonard Green, Clerk

No. 86-1867

MICHIGAN STATE CHAMBER OF COMMERCE v. AUSTIN

MERRITT, Circuit Judge, dissenting from denial of en banc review. This case should be reconsidered en banc. Because our Court's decision holds unconstitutional a crucial provision of the Michigan Campaign Finance law, the Michigan Chamber of Commerce may now act as a conduit for large sums of money contributed by its corporate members--General Motors, Ford, Chrysler, etc.--in support of the corporations' favorite political candidates. The opinion simply does not apply the standard set out in the Supreme Court's ruling in FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (1986). There the Court laid down the 1st Amendment principle that such state laws are constitutional, except in very limited circumstances which it described as follows:

> We acknowledge the legitimacy of [the] concern that organizations that amass great wealth in the economic marketplace not gain unfair advantage in the political marketplace.
>
> . . .
>
> In particular, [the pro-life corporation here] has three features essential to our holding that it may not constitutionally be bound by § 441b's restriction on independent spending. First. . . . If political fundraising events are expressly denominated as requests for contributions that will be used for political purposes, including direct expenditures, these events cannot be considered business activities. This ensures that political resources reflect political support. Second, it has no shareholders or other persons affiliated so as to have a claim on its assets or earnings. This ensures that persons connected with the organization will have no economic disincentive for disassociating with it if they disagree with its political activity. Third, [the corporation] was not established by a business corporation or a labor union, and it is its policy not to accept contributions from such entities. This prevents such corporations from serving as conduits for the type of direct spending that creates a threat to the political marketplace (emphasis added).

479 U.S. at 263-64. Four members of the Court dissented from even this narrow 1st Amendment

restriction on state control of corporate political contributions: Chief Justice Rehnquist, and Justices White, Blackmun and Stevens.

The Michigan Chamber meets none of these three "features essential to our holding," much less all of them. For example, the Supreme Court specifically stated that the pro-life group at issue could not "serv[e] as conduits for the type of direct spending that creates a threat to the political marketplace." Id. at 264. The panel of our Court describes the Chamber as "comprised of about eight thousand voluntary members, approximately seventy-five percent of whom are corporations." Michigan State Chamber of Commerce v. Austin, No. 86-1867, slip op. at 2 (6th Cir. Sept. 15, 1988)(emphasis added). Thus, the panel itself--without recognizing

it--characterized the Michigan Chamber so as to place it outside the narrow exception carved out by the Supreme Court for a pro-life, nonprofit, nonstock corporation which only published a newsletter that urged its members to vote "pro-life" in the upcoming elections. The Michigan Chamber's money for placement of advertisements for political candidates came from, at least, 6000 corporate members. The panel decision, therefore, permits the very evil which all members of the Supreme Court agreed a state could prohibit. The panel allows the Chamber to serve as a conduit for the type of direct spending that Michigan legislators believe creates a threat to the political marketplace. MCFL, 479 U.S. at 264.

In addition, the first prong of the test is not met because the record does not

reflect that the members received clear notice that their dues would be used for political contributions. Neither is there any showing that the "economic incentives" of all Chamber members are served by the political contributions under the second prong of the test, or that all members would "associate" themselves with the Chamber's political contributions.

The entire Court should address this important case. The Michigan law was adopted after due consideration of a serious problem by popularly elected legislators concerned about what they considered to be the corrupting influence of corporate contributions on the electoral process. The doctrine of judicial restraint cautions that we should not disregard or broadly expand the narrow principle clearly drawn by the Supreme Court

two years ago. The Court has made its ruling, and we must follow it.

Keith, Kennedy and Jones, JJ., concur in the foregoing dissent.

UNITED STATES OF AMERICA
DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN STATE CHAMBER OF COMMERCE, a non-profit Michigan Corporation,

Plaintiff,

-vs-

RICHARD H. AUSTIN, Michigan Secretary of State, and FRANK J. KELLEY, Michigan Attorney General,

Defendants.
_____/

Case No. G85-496 CA5
OPINION

This lawsuit concerns the constitutionality of section 54(1) of the Michigan Campaign Finance Act, M.C.L. § 169.254(1), under the First and Fourteenth Amendments to the United States Constitution and Article I of the Michigan Constitution. Plaintiff is the Michigan State Chamber of Commerce. Defendants are Richard H. Austin, the

Michigan Secretary of State, and Frank J. Kelley, the Michigan Attorney General.

On May 24, 1985, plaintiff filed this action for declaratory and injunctive relief against the enforcement of section 54(1) of the Michigan Campaign Finance Act (the "Act"). Section 54(1) prohibits corporations from making an expenditure in support of or in opposition to the nomination or election of a political candidate. A corporation which violates section 54(1) is guilty of a felony and subject to a fine of $10,000. M.C.L. § 169.254(5). In brief, plaintiff alleges that section 54(1) violates the First Amendment, the equal protection clause of the Fourteenth Amendment, and similar provisions of the Michigan Constitution.

On May 9 and 12, and June 12, 13, 1986, the parties tried this lawsuit to this court

without a jury. The following opinion constitutes this court's findings of fact and conclusions of law pursuant to Fed. R. Civ. P. 52(a).

FACTUAL and PROCEDURAL BACKGROUND

Plaintiff is a non-profit, Michigan corporation established in 1959 and consisting of approximately 8,000 members. Of those 8,000 members, more than 75 percent are corporations. Plaintiff seeks to promote the economic interests of its members and Michigan businesses generally through a number of activities. For example, plaintiff furthers the business training and education of its members by sending its members newsletters, bulletins, and reports and by organizing seminars and conventions. Plaintiff also seeks to encourage and maintain ethical business practices. Finally,

plaintiff assumes an active role in political affairs as part of its work for its members and Michigan businesses. Plaintiff participates in the political process by lobbying the Michigan legislature with respect to particular legislation or regulations, advocating the passage or defeat of ballot questions, and communicating with its members about partisan political issues. In addition, plaintiff established in 1977 a separate segregated fund--the Michigan State Chamber of Commerce Political Action Committee ("Chamber PAC")--that, among other things, directly participates in political elections. Plaintiff's role in the Michigan electoral process is the subject of this litigation.

A special election was called for Monday, June 10, 1985, to fill a vacancy in the 93rd

legislative district for the Michigan House of Representatives. Through a paid advertisement in the June 9, 1985 edition of the Grand Rapids Press[1] plaintiff wished to make a public statement in support of Richard Bandstra, a candidate in the special election. Plaintiff's intended statement was not at the direction or under the control of Mr. Bandstra or any committee advocating his election. Fearing criminal prosecution under M.C.L. § 169.254(5), plaintiff filed this action for declaratory and permanent injunctive relief allowing it to support, apart from the Chamber PAC, the nomination and election of political candidates such as Richard Bandstra through political advertisements and other independent expenditures.[2]

During the trial of this matter on May 9 and 12, and June 12 and 13, 1986, the court

heard the testimony of seven witnesses and received 53 exhibits into evidence.[3] All seven witnesses provided a much needed background or context to the constitutional questions presented in this lawsuit. The testimony of H. Richard Mayberry, Jr., on behalf of plaintiff, and Edwin W. Epstein, on behalf of defendants, proved especially helpful to the court. Those gentlemen each testified with much candor and expertise concerning the realities of campaign financing specifically and political elections generally. Although I must often agree with Carl Sandburg's observation that "[a]n expert is only a damned fool a long ways from home", in this case the expertise of Mr. Mayberry and Mr. Epstein aided the court's understanding of the political realities and competing interests underlying the constitutional issues raised by govern-

mental regulation of political campaigns. Their testimony, along with the testimony of the other witnesses, informed and shaped the following discussion. See Federal Election Commission v. National Conservative Political Action Committee, ___ U.S. ___, 105 S.Ct. 1459, 1469 (1985).

The issues raised by this case have been extensively and amply briefed by the parties. In addition, the court permitted the Michigan Democratic Party to file an amicus curiae brief at the summary judgment hearing. The Michigan Democratic Party subsequently sought leave to file a post-trial memorandum. I permitted the filing of this memoranda under the erroneous impression plaintiff had no objection. Plaintiff timely objected and I regret the misunderstanding. However, the amicus brief, in no way, affected the outcome of the case.

DISCUSSION

A. Section 54(1) of the Michigan Campaign Finance Act.

Section 54(1) of the Michigan Campaign Finance Act is the product of a long standing effort by the Michigan legislature to regulate abuses of the electoral process. Along with several other states and the federal government, the State of Michigan enacted legislation during the Progressive Era prohibiting corporate contributions and, expenditures in connection with political elections. See generally 1913 P.A. 109, § 14; People v. Gansley, 191 Mich. 357, 158 N.W. 195 (1916). See also United States v. Auto. Workers, 352 U.S. 567, 570-76 (1957). In the wake of the scandals surrounding the 1972 Presidential election, the Michigan legislature amended the Corrupt Practices

Act of 1913 in 1975 and again in 1976.[4] See 1975 P.A. 227; 1976 P.A. 388. The 1976 Act greatly expanded the role of corporations in Michigan political elections by allowing corporations to establish and fund the administration of separate segregated funds, which could make expenditures in support of political candidates. See M.C.L. § 169.255(1). In section 54(1) of the 1976 Act, however, the Michigan legislature continued the prohibition of corporate expenditures in political elections found in the 1913 Corrupt Practices Act.

Section 54(1) of the Michigan Campaign Finance Act provides that:

> "Except with respect to the exceptions and conditions in subsections (2) and (3) and section 55, and to loans made in the ordinary course of business, a corporation may not make a contribution or expenditure or provide volunteer personal services which services are excluded from the definition of a contribution pursuant to section 4(3)(a)."

M.C.L. § 169.254(1). The Act defines an "expenditure" to include "a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question." M.C.L. § 169.206(1). Within the larger class of expenditures, the Act defines an "independent expenditure" as "an expenditure . . . by a person if the expenditure is not made at the direction of, or under the control of, another person and if the expenditure is not a contribution to a committee." M.C.L. § 169.209(1).

In this case, plaintiff's proposed advertisement in favor of candidate Bandstra

involved an independent expenditure within the meaning of the Act. Plaintiff intended to make a payment of money for goods or services in assistance of the election of a candidate. That payment was not to be made at the direction or under the control of candidate Bandstra or his campaign committee. Accordingly, plaintiff's proposed payment for the newspaper advertisement in favor of candidate Bandstra would have constituted an independent expenditure under the Act. See M.C.L. §§ 169.206(1), 169.209(1).

Before considering plaintiff's constitutional challenges to section 54(1), I must first determine whether section 54(1) prohibits corporate independent expenditures such as plaintiff's proposed independent expenditure in support of candidate Bandstra.

See United States v. C.I.O., 335 U.S. 106 (1948). Section 54(1), by its terms, fails to prohibit "independent expenditures" by corporations. Instead, section 54(1) prohibits the larger class of "expenditures" by corporations without an explicit prohibition of the narrower class of independent expenditures. Nonetheless, because all "independent expenditures" are "expenditures" within the meaning of the Act, the prohibition of "expenditures" in section 54(1) by definition includes a prohibition of "independent expenditures." For example, if the numbers 1 and 2 comprise sub-set A and the number 1, 2, 3, and 4 comprise set B, then an exclusion of set B without mention of sub-set A would require exclusion of sub-set A as well. Consequently, this court cannot avoid ruling upon plaintiff's constitutional challenges to section 54(1) based

upon the argument that section 54(1) fails to prohibit corporate independent expenditures such as the advertisement proposed by plaintiff in favor of Richard Bandstra.

B. The Constitutionality of Section 54(1).

Plaintiff challenges the constitutionality of the prohibition of corporate independent expenditures in political elections by section 54(1) under the United States and Michigan Constitutions. Specifically, plaintiff contends that section 54(1) violates its freedom of speech as guaranteed by the First Amendment to the Constitution[5] and Article I, §§ 3, 5 of the Michigan Constitution. Second, plaintiff alleges that section 54(1)'s prohibition of corporate independent expenditures violates the equal protection clause of the Fourteenth

Amendment and Article I, § 2 of the Michigan Constitution by distinguishing between corporate and other non-corporate business entities. Finally, plaintiff complains that the Act violates the equal protection clause of the Fourteenth Amendment and Article I, § 2 of the Michigan Constitution by exempting certain newspaper articles from the reach of section 54(1). See M.C.L. § 169.206(3)(d).

Throughout the pretrial and trial proceedings of this matter plaintiff failed to distinguish between its claims under the United States Constitution and its claims under the Michigan Constitution. However, with regard to the context of legislative restraints upon electoral activities, the Michigan Supreme Court interprets Article I, §§ 2, 3, and 5 of the Michigan Constitution

identically with similar protections in the First and Fourteenth Amendments to the Constitution. See Advisory Opinion 1975 Constitutionality of 1975 P.A. 227, 396 Mich. at 484-85, 492-93, 242 N.W.2d at 9-10, 14. Accordingly, the following analysis under the First and Fourteenth Amendments to the Constitution shall apply equally to plaintiff's claims under the Michigan Constitution.

(1) The First Amendment and Corporate Independent Expenditures in Political Elections -- The First Amendment to the Constitution forbids states from enacting any law abridging the freedom of speech. E.g., Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 500-501 (1952). Section 54(1)'s prohibition of corporate independent expenditures in political elections strikes at

speech within the traditional core of the First Amendment. As the Court explained in Buckley v. Valeo, 424 U.S. 1, 14-15 (1976),

> "debate on the qualifications of candidates [is] integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order 'to assure the unfettered interchange of idea for the bringing about of political and social changes desired by the people' Roth v. United States, 354 U.S. 476, 484 (1957). . . . In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation. As the Court observed in Monitor Patriot Co. v. Roy, 401 U.S. 265, 272 (1971), 'it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office.'"

In addition, speech such as a corporate independent expenditure in a political election "does not lose its First Amendment protection because money is spent to project

it." Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 761 (1976). Section 54(1) limits corporations' means to participate in the electoral process. Section 54(1), therefore, imposes a limitation upon plaintiff's freedom of speech by prohibiting corporate independent expenditures in political elections. Section 54(1), however, is not unconstitutional simply because it places a restraint upon protected speech. Instead, this court must determine whether defendants can offer sufficient justification for the limitation upon plaintiff's freedom of speech. Specifically, I must consider whether the prohibition of corporate independent expenditures in political elections found in section 54(1) is (i) a reasonable time, place, or manner restriction, or (ii) a narrowly tailored means of

serving a compelling state interest. See Consolidated Edison Co. v. Public Service Commission, 447 U.S. 530, 535 (1980).

Reasonable time, place or manner regulations that fulfill a significant governmental interest and leave ample alternative channels for communication are permissible under the First Amendment. Id. A governmental regulation upon speech cannot be justified as a time, place, or manner restriction if based upon either the content or subject matter of the speech.

"[T]ime, place, and manner regulations must be 'applicable to all speech irrespective of content.'" Id. at 536 (quoting Erznoznik v. City of Jacksonville, 422 U.S. 205, 209 (1975)). Although some regulations defy easy classification as a content/subject matter regulation or a time, place, manner

regulation,[6] section 54(1) clearly imposes a content/subject matter regulation upon corporations' speech. Section 54(1) prohibits particular speech precisely because of the content of that speech -- speech "in assistance of, or in opposition to, the nomination or election of a candidate." M.C.L. § 169.206(1). Consequently, section 54(1)'s prohibition of corporate independent expenditures in political elections cannot be upheld as a content-neutral time, place, or manner regulation. See Federal Election Commission v. Massachusetts Citizens for Life, Inc., 769 F.2d 13, 22 (1st Cir. 1985).

Defendants may prohibit corporate independent expenditures in political elections if that prohibition is a precisely drawn means of serving a compelling state interest. See Consolidated Edison Co., 447

U.S. at 540. In this case, defendants offer several justifications in support of the prohibition upon corporate independent expenditures contained in section 54(1). First, defendants maintain that section 54(1) protects the integrity of the electoral process by preventing corruption and the appearance of corruption created by large, corporate independent expenditures on behalf of political candidates. Second, defendants argue that section 54(1) protects the interests of some shareholders by preventing the use of corporate funds to elect political candidates whom those shareholders may oppose. Third, defendants contend that section 54(1) ensures that the electorate is fully informed of the sources of campaign finances by requiring corporations to make their campaign expenditures from a separate segregated fund which must report the names

of its contributors. For the following reasons, I find that section 54(1)'s prohibition of corporate independent expenditures in political elections serves the state's compelling interest in preventing corruption or the appearance of corruption in the electoral process.[7]

No doubt exists that a state's interest in safeguarding the electoral process from corruption or the appearance of corruption is a compelling interest. As the Supreme Court explained in First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978):

> "Preserving the integrity of the electoral process, preventing corruption, and 'sustaining the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government' are interests of the highest importance. Preservation of the individual citizen's confidence in government is equally important."

Id. at 788-89 (quoting United States v. Automobile Workers, 352 U.S. at 575). This

case, however, presents the question whether a prohibition of corporate independent expenditures in political campaigns serves the governmental interest in stemming the reality or appearance of corruption in the electoral process.

If section 54(1) prohibited individuals from making independent expenditures in political campaigns, then section 54(1) would necessarily fall as unconstitutional under the First Amendment. Buckley v. Valeo, 424 U.S. 1, 39-51 (1976)-(per curiam). In Buckley, the Court "struck down the [Federal Election Campaign Act's] limitation on individuals' independent expenditures because [it] found no tendency in such expenditures, uncoordinated with the candidate or his campaign, to corrupt or to give the appearance of corruption." Federal Election Commission

v. National Conservative Political Action Committee, ____ U.S. ____, 105 S.Ct. 1459, 1469 (1985)-(finding the Presidential Election Campaign Fund Act's limitation on independent expenditures by political committees to be unconstitutional under the First Amendment). The Buckley Court explained that generally independent expenditures by individuals unlike direct contributions to political candidates, do not pose the dangers of actual or apparent quid pro quo arrangements between a candidate and her supporters. "The absence of prearrangement and coordination of an expenditure with the candidate or his agent . . . alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate." Buckley, 424 U.S. at 47. The Court on several occasions, however, has expressly left unanswered whether a state or

the federal government may prohibit corporations from making independent expenditures to influence elections for public office. See National Conservative Political Action Committee, 105 S.Ct. at 1468; Bellotti, 435 U.S. at 788 n.26. This case presents that exact issue.

Corporations generally share First Amendment liberties commensurate with individuals. See Bellotti, 435 U.S. at 777-86. Nonetheless, under some circumstances courts may find an unconstitutional limitation upon individuals' speech to be permissible limitation upon corporations' speech. See Pacific Gas & Electric v. P.U.C. of California, ___ U.S. ___, 106 S.Ct. 903, 917 (1986) (Marshall, J., concurring); California Medical Asseciation v. Federal Election Commission, 453 U.S. 182, 201

(1981). In the context of independent expenditures to influence political elections such as a distinction between individuals and corporations is warranted.

"Favors from government often carry with them an enhanced measure of regulation." United States v. Morton Salt Co., 338 U.S. 632, 652 (1950). The Michigan legislature has granted corporations the advantages of perpetual life, limited liability, and wide-ranging powers to encourage economic expansion and prosperity. See generally M.C.L. § 450.1101 et seq. Such advantages allow corporations to amass great aggregations of capital and influence. In the economic sphere such power is proper and often highly beneficial to the general welfare of our society. In the political sphere, however, such power coupled with the faceless nature

of corporations may very well create an atmosphere of distrust or the appearance of corruption in the electoral process. Unlike in referenda on issues of general public interest, this atmosphere of distrust in the electorate may arise in political elections where corporate power through either independent expenditures or direct contributions becomes closely allied with candidates. The Michigan legislature, as well as the United States Congress,[8] long ago arrived at that conclusion and, accordingly, limited the role of corporations in the electoral process. See Advisory Opinion on Constitutionality of 1975 P.A. 227, 396 Mich. 465, 242 N.W.2d 3 (1976); Gansley, 191 Mich. 357, 158 N.W. 195 (1916). "The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on . . . corporations, on the other, reflect a judgment

by [the legislature] that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process." California Medical Association, 453 U.S. at 201. The judgment of the Michigan legislature, as expressed in sections 54(1) and 55 of the Michigan Campaign Finance Act, "to account for the particular legal and economic attributes of corporations . . . warrants considerable deference." Federal Election Commission v. National Right to Work Committee, 459 U.S. 197, 209 (1982). Courts should not "second-guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared." Id. at 210. Section 54(1) is such a prophylactic measure narrowly tailored to the state's interest in

preventing the appearance of corruption in elections for public office.

Although section 54(1) of the Act prohibits corporations such as plaintiff from independently expending money to influence elections for public office, section 55(1) of the Act allows corporations to "make an expenditure for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes." M.C.L. § 169.255(1). A separate segregated fund, such as the Chamber PAC, can fully participate in electoral politics. For example, the record in this case amply demonstrates that the Chamber PAC frequently makes independent expenditures to influence political elections, and those efforts have been tremendously successful in electing Chamber PAC

endorsed candidates. A separate segregated fund, however, is without the unlimited economic advantages and power of corporations with vast resources. Through its allowance for separate segregated funds, the Michigan Campaign Finance Act provides an opportunity for corporate input into electoral politics while guarding against actual or perceived alliances between corporate power and political candidates. It does not matter, of course, that there has not been a finding of actual corruption, given that corporate independent expenditures for candidates have been banned since 1913. Clearly, however, a finding of the threat or appearance of corruption is enough. Read in conjunction with section 55(1), therefore, section 54(1) is a narrowly tailored prohibition of corporate independent expenditures in political elections.

In conclusion, although directly infringing plaintiff's freedom of speech protected by the First Amendment, section 54(1)'s prohibition of corporate independent expenditures in political elections is a narrowly drawn regulation that serves a compelling state interest. Consequently, section 54(1) is valid under the First Amendment to the Constitution. Plaintiff's complaint of financial restrictions and limitations placed upon it by this legislation should more properly be addressed to the state legislature.

(2) The Equal Protection Clause and Corporate Independent Expenditures in Political Elections -- In addition to its claim under the First Amendment, plaintiff claims that section 54(1) Campaign Finance Act violates the equal protection clause of

the Fourteenth Amendment. Plaintiff presents two specific claims under the equal protection clause. First, plaintiff contends that section 54(1) of the Act impermissibly distinguishes between corporations, on one hand, and noncorporate business entities and labor unions, on the other hand, in prohibiting independent expenditures in political elections. Second, plaintiff argues that the Act impermissibly discriminates against plaintiff and other non-media corporations by exempting media corporations from the prohibition of section 54(1). See M.C.L. § 169.206(3)(d).

Corporations are entitled to the equal protection of the laws as guaranteed by the Fourteenth Amendment. E.g., Gulf, Colorado & Santa Fe Railway Co. v. Ellis, 165 U.S. 150 (1897). The equal protection clause of

the Fourteenth Amendment "'does not require things which are different in fact or opinion to be treated in law as though they were the same.'" Plyler v. Doe, 457 U.S. 202, 216 (1982) (quoting Tigner v. Texas, 310 U.S. 141, 147 (1940)). Instead, the equal protection clause forbids "invidious" distinctions between persons by the states. Williams v. Rhodes, 393 U.S. 23, 30 (1968). Federal courts consider legislative distinctions presumptively invidious when those distinctions burden the exercise of a fundamental right under the Constitution. Plyler, 457 U.S. at 216-17. In order to survive scrutiny under the Fourteenth Amendment, such distinctions must be precisely tailored to serve a compelling state interest. Id. at 217. In this case, section 54(1) of the Act burdens plaintiff's exercise of its First Amendment right to

freedom of speech,[9] which is a fundamental right under the Constitution. Therefore, any distinctions in section 54(1) between plaintiff and other persons must be precisely tailored to serve a compelling state interest. For the following reasons, I find that section 54(1) satisfies such strict scrutiny.

Section 54(1) distinguishes between corporations and non-corporate persons or entities. Section 54(1) does not distinguish between corporations and labor unions. As the record establishes in this case, a number of labor unions are incorporated in the State of Michigan. Section 54(1) prohibits independent expenditures in political elections by those labor unions as well as any other corporations. Although section 54(1) does distinguish between corporations

and non-corporate business entities such as partnerships, that distinction serves a compelling state interest. As previously explained in this opinion, section 54(1)'s burden upon plaintiff's freedom of speech serves a compelling state interest because of the unique threat of corporate power to the electoral process. See California Medical Association, 453 U.S. at 210. Therefore, plaintiff's first claim under the equal protection clause of the Fourteenth Amendment must fail.

As its second claim under the equal protection clause, plaintiff maintains that section 54(1) impermissibly distinguishes between media and non-media corporations. Section 6(3)(d) of the Act, M.C.L. § 169.206(3)(d), establishes that an expenditure under section 54(1) does not include:

> "An expenditure by a broadcasting station, newspaper, magazine, or other periodical or publication for any news story, commentary, or editorial in support of or opposition to a candidate for elective office, or a ballot question in the regular course of publication or broadcasting."

Section 6(3)(d) makes no distinction between media and non-media corporations. Any corporation, whether termed a "media" corporation or a "non-media" corporation,[10] may avail itself of the exemption from section 54(1) provided by section 6(3)(d). Cf. United States v. C.I.O., 335 U.S. 106 (1948). Therefore, plaintiff's second claim under the equal protection clause must fail.

SUMMARY

In summary, the prohibition of corporate independent expenditures in political elections by section 54(1) of the Michigan Campaign Finance Act burdens plaintiff's

freedom of speech as protected by the First Amendment. Nonetheless, section 54(1)'s prohibition of corporate independent expenditures in political elections is a narrowly drawn regulation that serves a compelling state interest. Consequently, section 54(1) is valid under the First Amendment to the Constitution and Article I, §§ 3 and 5 of the Michigan Constitution.

With respect to plaintiff's claims under the equal protection clause of the Fourteenth Amendment, any distinctions between corporations and non-corporate entities have been narrowly tailored to serve a compelling state interest. Further, in its prohibition of corporate independent expenditures to influence elections for public office, section 54(1) of the Act makes no distinction between "media" corporations and

"non-media" corporations. Consequently, section 54(1) is valid under the equal protection clause of the Fourteenth Amendment to the Constitution and Article I, § 2 of the Michigan Constitution.

Douglas W. Hillman
Chief Judge

Dated: _____

FOOTNOTES

1. The Grand Rapids Press is a daily newspaper with a circulation of approximately 140,000. The Grand Rapids Press is the only major daily newspaper in the Grand Rapids metropolitan area.

2. Although this court denied plaintiff's motion for a temporary injunction with respect to the June, 1985 special election, this "case falls within the class of controversies 'capable of repetition, yet evading review.'" First National Bank of Boston v. Bellotti, 435 U.S. 765, 774 (1978) (quoting Southern Pacific Terminal Co. v. ICC, 219 U.S. 498, 515 (1911)). Consequently, I find that this case is not moot and proceed to consider the merits of plaintiff's claims.

3. At trial, the parties offered six additional exhibits: plaintiff's exhibits 15 and 16, and defendants' exhibits 7a, 7b, 7c, and 7d. The court withheld a ruling upon the admissibility of those exhibits. After considering the parties' arguments in favor and opposition to the introduction of those exhibits, I find that plaintiff's exhibits 15 and 16, and defendants' exhibits 7a and 7d are admissible into evidence.

4. In 1976, the Michigan legislature reenacted the 1975 Act in response to two advisory opinions by the Michigan Supreme Court finding the 1975 Act unconstitutional under the federal and state constitutions. See Advisory Opinion on Constitutionality of 1975 P.A. 227, 396

Mich. 123, 240 N.W.2d 193; 396 Mich. 465, 242 N.W.2d 3 (197).

5. First Amendment liberties are made applicable to the states through the due process clause of the Fourteenth Amendment. E.g., Virginia State Bd. of Pharmacy v. Virginia CItizens Consumer Council, Inc., 425 U.S. 748 (1976). Nonetheless, for the sake of clarity and consistency, I shall refer only to the First Amendment.

6. Compare City of Renton v. Playtime Theatres, Inc., ___ U.S. ___, 106 S.Ct. 925 (1986) with Id., ___ U.S. ___, 106 S.Ct. 925, 933-37 (Brennan, J., dissenting).

7. Given this holding, no reason exists to consider the merits of defendants' second and third justifications for section 54(1). Nonetheless, I note that the Supreme Court has held that "preventing corruption or the appearance of corruption are the only legitimate and compelling interest thus far identified for restricting campaign finances." Federal ELection Commission v. National Conservative Political Action Committee, ___ U.S. ___, 105 S.Ct. 1459, 1469 (1985).

8. See United States v. C.I.O., 335 U.S. 106 (1948).

9. See supra at 7.

10. I have grave doubts whether such a distinction could, in reality, be made. See Bellotti, 435 U.S. at 796 (Burger, C.J., concurring).

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JUDGMENT IN A CIVIL CASE

MICHIGAN STATE CHAMBER OF COMMERCE, a non-profit Michigan Corporation,

Plaintiff,

v

CASE NUMBER:

RICHARD H. AUSTIN, Michigan Secretary of State, and FRANK J. KELLEY, Michigan Attorney General,

Defendants

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury had rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of defendants and against plaintiff. Costs are to be taxed as provided by law.

SEPTEMBER 03, 1986
Date

C. DUKE HYNEK
Clerk

APPROVED AS TO FORM:

Douglas W. Hillman,
Chief Judge

(By) Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 86-1867

RICHARD H. AUSTIN, Michigan Secretary of State, and FRANK J. KELLEY, Michigan Attorney General,

Appellants,

v.

MICHIGAN STATE CHAMBER OF COMMERCE, a non-profit Michigan Corporation,

Appellee.

NOTICE OF APPEAL

The Appellants Richard H. Austin, Michigan Secretary of State and Frank J. Kelley, Michigan Attorney General, hereby appeal to the Supreme Court of the United States from the Judgment of the United States Court of Appeals for the Sixth Circuit entered on September 15, 1988, finding Mich. Comp. Law Ann. § 169.254(1)

(West 1988 Supp.) to be unconstitutional as applied to Appellee, and the Order denying petition for rehearing en banc entered on December 14, 1988.

This appeal is taken pursuant to 28 U.S.C. § 1254(2).

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Louis J. Caruso
Solicitor General

Gary P. Gordon
Richard P. Gartner
Assistant Attorneys General

Attorneys for Appellants

Business Address:
752 Law Building
525 West Ottawa Street
Lansing, MI 48913
(517) 373-6434

Dated: March 1, 1989
COC2-NOA

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 86-1867

RICHARD H. AUSTIN, Michigan Secretary of State, and FRANK J. KELLEY, Michigan Attorney General,

Appellants,

v.

MICHIGAN STATE CHAMBER OF COMMERCE, a non-profit Michigan Corporation,

Appellee.

CERTIFICATE OF SERVICE

I certify that I have caused to be served, by first class mail postage prepaid, a copy of the Notice of Appeal of Richard H. Austin and Frank J. Kelley in the above-encaptioned cause on this 1st day of March, 1989, on the following counsel at the addresses set forth below:

Mr. William J. Perrone
Dykema, Gossett, Spencer, Goodnow & Trigg
800 Michigan National Tower
Lansing, Michigan 48933

Mr. Joel M. Boyden
Dykema, Gossett, Spencer, Goodnow & Trigg
200 Oldtown Riverfront Bldg.
248 Louis Campau Promenade, N.W.
Grand Rapids, Michigan 49503

Richard P. Gartner

MCL § 169.201. Definitions

Sec. 1. Except as otherwise defined in this act, the words and phrases defined in sections 2 to 12 shall have the meanings respectively ascribed to them in those sections for the purposes of this act.

MCL § 169.202. Ballot question; ballot question committee; business

Sec. 2. (1) "Ballot question" means a question which is submitted or which is intended to be submitted to a popular vote at an election whether or not it qualifies for the ballot.

(2) "Ballot question committee" means a committee acting in support of, or in opposition to, the qualification, passage, or defeat of a ballot question but which does not receive contributions or make expenditures or contributions for the purpose of

influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate.

(3) "Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individuals, holding company, joint stock company, receivership, trust, activity, or entity which is organized for profit or nonprofit purposes.

MCL § 169.203. Candidate; candidate committee; closing date; committee

Sec. 3. (1) "Candidate" means an individual: (a) who files a fee, affidavit of incumbency, or nominating petition for an elective office; (b) whose nomination as a candidate for elective office by a political party caucus or convention is certified to the appropriate filing official; (c) who

receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made; or (d) who is an officeholder who is the subject of a recall vote. Unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline, an elected officeholder shall be considered to be a candidate for reelection to that same office for the purposes of this act only.

For purposes of section 61 to 71, "candidate" only means in a primary election, a candidate for the office of governor; and in a general election, a candidate for the office of governor or lieutenant governor but the candidates for the office of governor and lieutenant governor of the same political party in a general election shall be considered as 1 candidate.

(2) "Candidate committee" means the committee designated in a candidate's filed statement of organization as that individual's candidate committee. A candidate committee shall be presumed to be under the control and direction of the candidate named in the same statement of organization. Notwithstanding subsection (4), an individual shall form a candidate committee pursuant to section 21 when the individual becomes a candidate under subsection (1).

(3) "Closing date" means the date through which a campaign statement is required to be complete.

(4) "Committee" means a person who receives contributions or makes expenditures for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question, if contributions received total $200.00 or more in a calendar year or expenditures made total $200.00 or more in a calendar year. An individual, other than a candidate, shall not constitute a committee.

MCL § 169.204. Contribution

Sec. 4. (1) "Contribution" means a payment, gift, subscription, assessment, expenditure, contract, payment for services,

dues, advance, forbearance, loan, donation, pledge or promise of money or anything of ascertainable monetary value, whether or not conditional or legally enforceable, or a transfer of anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned.

(2) Contribution includes the purchase of tickets or payment of an attendance fee for events such as dinners, luncheons, rallies, testimonials, and similar fund raising events; an individual's own money or property other than the individual's homestead used on behalf of that indivi-

dual's candidacy; the granting of discounts or rebates not available to the general public; or the granting of discounts or rebates by broadcast media and newspapers not extended on an equal basis to all candidates for the same office.

(3) Contribution does not include:

(a) Volunteer personal services provided without compensation, or payments of costs incurred of less than $250.00 in a calendar year by an individual for personal travel expenses if the costs are voluntarily incurred without any understanding or agreement that the costs shall be, directly or indirectly, repaid.

(b) Amounts received pursuant to a pledge or promise to the extent that the amounts were previously reported as a contribution.

(c) Food and beverages, not to exceed $50.00 in value during a calendar year, which are donated by an individual and for which reimbursement is not given.

MCL § 169.205. Election; elective office

Sec. 5. (1) "Election" means a primary, general, special, or millage election held in this state or a convention or caucus of a political party held in this state to nominate a candidate. Election includes a recall vote.

(2) "Elective office" means a public office filled by an election, except for federal offices. A person who is appointed to fill a vacancy in a public office which is ordinarily elective holds an elective office. Elective office does not include the office of precinct delegate.

MCL § 169.206. Expenditure

Sec. 6. (1) "Expenditure" means a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, or the qualification, passage, or defeat of a ballot question. An offer or tender of an expenditure is not an expenditure if expressly and unconditionally rejected or returned.

(2) Expenditure includes a contribution or a transfer of anything of ascertainable monetary value for purposes of influencing the nomination or election of any candidate or the qualification, passage, or defeat of a ballot question.

(3) Expenditure does not include:

(a) An amount paid pursuant to a pledge or promise to the extent the amount was previously reported as an expenditure.

(b) An expenditure for communication by a person strictly with the person's paid members or shareholders.

(c) An expenditure for communication on a subject or issue if the communication does not support or oppose a ballot issue or candidate by name or clear inference or an expenditure for the establishment, administration, or solicitation of contributions to a fund or independent committee.

(d) An expenditure by a broadcasting station, newspaper, magazine, or other periodical or publication for any news story, commentary, or editorial in support of or

opposition to a candidate for elective office, or a ballot question in the regular course of publication or broadcasting.

(c) An expenditure for nonpartisan voter registration or nonpartisan get-out-the-vote activities. This exclusion shall not apply if a candidate or group of candidates sponsors or finances the activity or is identified by name with the activity. This exclusion shall apply to an activity performed pursuant to sections 491 to 524 of Act No. 116 of the Public Acts of 1954, as amended, being sections 168.491 to 168.524 of the Michigan Compiled Laws, by the secretary of state and other registration officials who are identified by name with the activity. This exclusion shall apply to a candidate who is an elected officeholder and whose office is not on the ballot for the

general election in the calendar year in which the expenditure is made or is not a candidate within the meaning of sections 3(1)(a) and 3(1)(b) and is identified by name with the activity.

MCL § 169.207. Filed; filer; filing official; fund raising event; gift

Sec. 7. (1) "Filed" means the receipt by the appropriate filing official of a statement or report required to be filed under this act.

(2) "Filer" means a person required to file a statement or report pursuant to this act.

(3) "Filing official" means the official designated pursuant to this act to receive required statements and reports.

(4) "Fund raising event" means an event such as a dinner, reception, testimonial,

rally, auction, bingo, or similar affair through which contributions are solicited or received by purchase of a ticket, payment of an attendance fee, donations or chances for prizes, or through purchase of goods or services.

(5) "Gift" means a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, unless consideration of equal or greater value is given therefor.

MCL § 169.208. Immediate family; independent committee

Sec. 8. (1) "Immediate family" means a child residing in a candidate's household, a spouse of a candidate, or an individual claimed by that candidate or that candidate's spouse as a dependent for federal income tax purposes.

(2) "Independent committee" means a committee other than a political party committee which:

(a) Filed a statement of organization as an independent committee at least 6 months before an election for which it expected to accept contributions or make expenditures in support of or in opposition to a candidate for nomination to or election to a state elective office; and received contributions from at least 25 persons and made expenditures in support of or in opposition to 3 or more candidates for nomination for or election to a state elective office in the same calendar year.

(b) Is a separate level, subsidiary, subunit, or affiliate of an organization which is an independent committee if the decisions or judgments to make contributions

or expenditures on behalf of candidates are independently exercised within the separate level, subsidiary, subunit, or affiliate of the parent organization and otherwise meets the requirements of subdivision (a).

MCL § 169.209. Independent expenditure; in-kind contribution or expenditure; loan

Sec. 9. (1) "Independent expenditure" means an expenditure as defined in section 6 by a person if the expenditure is not made at the direction of, or under the control of, another person and if the expenditure is not a contribution to a committee.

(2) "In-kind contribution or expenditure" means a contribution as defined in section 4 or expenditure as defined in section 6 other than money.

(3) "Loan" means a transfer of money, property, or anything of ascertainable mone-

tary value in exchange for an obligation conditional or not, to repay ih whole or part.

MCL § 169.210. Major political party; minor political party; nominee

Sec. 10. (1) "Major political party" means a political party qualified to have its name listed on the general election ballot whose candidate for governor received 25% or more of the popular vote cast in the preceding gubernatorial election. If only 1 political party received 25% or more of the popular vote cast for governor in the preceding gubernatorial election, then the political party with the second highest vote shall be deemed a major party.

(2) "Minor political party" means a political party qualified to have its name listed on the general election ballot but which does not qualify as a major party.

(3) "Nominee" means an individual nominated to be a candidate.

MCL § 169.211. Person; political committee; political merchandise; political party; political party commitee

Sec. 11. (1) "Person" means a business, individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, committee, or any other organization or group of persons acting jointly.

(2) "Political committee" means a committee which is not a candidate committee, political party committee, independent committee, or ballot question committee.

(3) "Political merchandise" means goods such as bumper stickers, pins, hats, beverages, literature, or other items sold

by a person at a fund raiser or to the general public for publicity or for the purpose of raising funds to be used in supporting or opposing a candidate for nomination for or election to an elective office or in supporting or opposing the qualification, passage, or defeat of a ballot question.

(4) "Political party" means a political party which has a right under law to have the names of its candidates listed on the ballot in a general election.

(5) "Political party committee" means a state central, district, or county committee of a political party which is a committee. Each state central committee shall designate the official party county and district committees. There shall not be more than 1 officially designated political party com-

mittee per county and per congressional district.

MCL § 169.212. Qualifying contribution; state elective office

Sec. 12. (1) "Qualifying contribution" means a contribution of money made by a written instrument by a person other than the candidate or the candidate's immediate family, to the candidate committee of a candidate for the office of governor which is $100.00 or less and made after April 1 of the year preceding a year in which a governor is to be elected. Not more than $100.00 of a person's total aggregate contribution may be used as a qualifying contribution in any calendar year. Qualifying contribution does not include a subscription, loan, advance, deposit of money, in-kind contribution or expenditure, or anything else of value except as prescribed in this act.

(2) "State elective office" means the office of governor, lieutenant governor, secretary of state, attorney general, justice of the supreme court, member of the state board of education, regent of the university of Michigan, member of the board of trustees of Michigan state university, member of the board of governors of Wayne state university, and member of the state legislature.

MCL § 169.251. Report of independent expenditures; violation, penalty

Sec. 51. (1) A person, other than a committee, who makes an independent expenditure, advocating the election of a candidate or the defeat of a candidate's opponents or the qualification, passage, or defeat of a ballot question, which totals an amount of $100.01 or more in a calendar year

shall file a report of the independent expenditure, within 10 days, with the clerk of the county of residence of that person. The report shall be made on an independent expenditure report form provided by the secretary of state and shall include the date of the expenditure, a brief description of the nature of the expenditure, the amount, the name and address of the person to whom it was paid, the name and address of the person filing the report, together with the name, address, occupation, employer, and principal place of business of each person who contributed $100.01 or more to the expenditure. The filing official receiving the report shall forward copies, as required, to the appropriate filing officers as described in section 36.

(2) A person who violates this section is subject to a civil penalty of not more than $500.00.

MCL § 169.254. Contributions by corporations and joint stock companies; violation, penalty

Sec. 54. (1) Except with respect to the exceptions and conditions in subsections (2) and (3) and section 55, and to loans made in the ordinary course of business, a corporation may not make a contribution or expenditure or provide volunteer personal services which services are excluded from the definition of a contribution pursuant to section 4(3)(a).

(2) An officer, director, stockholder, attorney, agent, or any other person acting for a corporation or joint stock company, whether incorporated under the laws of this or any other state or foreign country, except corporations formed for political purposes, shall not make a contribution or expenditure or provide volunteer personal

services which services are excluded from the definition of a contribution pursuant to section 4(3)(a).

(3) A corporation or joint stock company, whether incorporated under the laws of this or any other state or foreign country, except a corporation formed for political purposes, shall not make a contribution or provide volunteer personal services which services are excluded from the definition of a contribution pursuant to section 4(3)(a), in excess of $40,000.00, to each ballot question committee for the qualification, passage, or defeat of a particular ballot question.

(4) Nothing in this section shall preclude a corporation or joint stock company from making an independent expenditure in any amount for the qualification,

passage, or defeat of a ballot question. A corporation making an independent expenditure under this subsection shall be considered a ballot question committee for the purposes of this act.

(5) A person who knowingly violates this section is guilty of a felony and shall be punished by a fine of not more than $5,000.00 or imprisoned for not more than 3 years, or both, and if the person is other than an individual, the person shall be fined not more than $10,000.00.

MCL § 169.255. Establishment and administration and solicitation of contributions to a separate segregated fund; expenditures by corporations and joint stock companies; solicitation of contributions

Sec. 55. (1) A corporation or joint stock company formed under the laws of this or another state or foreign country may make an

expenditure for the establishment and administration and solicitation of contributions to a separate segregated fund to be used for political purposes. A fund established under this section shall be limited to making contributions to, and expenditures on behalf of, candidate committees, ballot question committees, political party committees, and independent committees.

(2) Contributions for a fund established by a corporation or joint stock company under this section may be solicited from any of the following persons or their spouses:

(a) Stockholders of the corporation.

(b) Officers and directors of the corporation.

(c) Employees of the corporation who have policy making, managerial, professional,

supervisory, or administrative nonclerical responsibilities.

(3) Contributions for a fund established under this section by a corporation which is nonprofit may be solicited from any of the following persons or their spouses:

(a) Members of the corporation who are individuals.

(b) Stockholders of members of the corporation.

(c) Officers or directors of members of the corporation.

(d) Employees of the members of the corporation who have policy making, managerial, professional, supervisory, or administrative nonclerical responsibilities.

(4) Contributions shall not be obtained for a fund established under this section by

use of coercion, physical force, or as a condition of employment or membership or by using or threatening to use job discrimination or financial reprisals.

(5) A person who knowingly violates this section is guilty of a felony and shall be punished by a fine of not more than $5,000.00 or imprisoned for not more than 3 years, or both, and if the person is other than an individual, the person shall be fined not more than $10,000.00.